

### **Remarks/Arguments**

Claims 5, 6, 8-14, 17-20, and 27 are pending. Claims 5, 11, 17, 23, and 27 have been amended. Claims 7, 15-16, 21-22, 24-26, and 28-30 have been canceled. Reconsideration of this application in light of the foregoing amendments and following remarks is requested.

#### **Rejections under 35 U.S.C. § 101**

Claim 23 has been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant has amended claim 23 in accordance with the Examiner's suggestion and submits that claim 23 is now in compliance with 35 U.S.C. § 101.

#### **Rejections under 35 U.S.C. § 112, First Paragraph**

Claim 5 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant has amended claim 5 to address the rejection and requests that the Examiner withdraw the rejection.

#### **Rejections under 35 U.S.C. § 103**

Claims 5, 6, 8-14, 17-20, and 27 stand rejected under 35 U.S.C. § 103 as being unpatentable over various combinations of U.S. Patent No. 6,490,632 to Vepa ("Vepa") in view of U.S. Patent No. 6,137,802 to Jones ("Jones") and/or U.S. Patent No. 6,393,483 to Latif ("Latif"). As provided in MPEP § 2143, "[t]o establish a prima facie case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." Furthermore, under MPEP § 2142, "[i]f the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness." It is submitted that the Office action does not factually support a prima facie case of obviousness based on the cited references for the following reasons.

Claims 5, 6, and 8-10

Claim 5, as amended, recites in part assigning a network adapter, wherein the network adapter is based on a first data link layer network access technology as a primary network adapter, changing a source hardware address of a data packet for the outgoing information to a data link layer address of the active network adapter; and modifying a destination hardware address of a data packet for the incoming information to that of the primary network adapter driver prior to sending the data packet to the network application, and wherein the source and destination hardware addresses of the data packet are not changed if the primary network adapter is used.

Applicant submits that the combination of references fails to teach or suggest the above recited element of claim 5. More specifically, Vepa describes "a filter that is adapted to mask a portion of a MAC address in an incoming data packet received at a NIC such that the MAC address in the incoming data packet is equivalent to the MAC address representing the NIC." (col. 4, lines 48-51). However, this simply masks part of the MAC address so that the receiving NIC will not reject a data packet that has a MAC address different than the receiving NIC (col. 7, lines 40-59) and does not actually change the address used to that of the current NIC. Furthermore, claim 5 does not change either the source or the destination hardware addresses of the data packet if the primary network adapter is used, unlike Vepa, which changes both to correspond to the associated NIC (col. 4, lines 12-14, 48-51). Therefore, the masking process described in Vepa simply does not teach or suggest modifying a destination hardware address as recited in claim 5, nor does the masking process disclosed in Vepa even serve the same purpose.

Accordingly, Vepa fails to teach or suggest at least the above recited element of claim 5 as required by MPEP § 2143. Jones and Latif fail to remedy the deficiencies of Vepa, and claim 5 is allowable over the cited references, whether taken singly or in combination. Claims 6 and 8-10 depend from and further limit claim 5 and are allowable for at least the same reasons as claim 5.

Claims 23 and 27

Claims 23 and 27, as amended, include elements similar to those described above with respect to claim 5 and are allowable for at least the same reason as claim 5.

Claims 11-14

Claim 11, as amended, recites in part identifying the first network adapter driver as inactive and the second network adapter driver as active after no packets are received by the network access arbitrator from the first network adapter driver for a predetermined period of time and after at least one packet is received by the network access arbitrator from the second network adapter driver within the predetermined period of time.

Applicant submits that the combination of references fails to teach or suggest the above recited elements of claim 11 as required by MPEP § 2143. More specifically, none of Vepa, Jones, or Latif, whether taken singly or in combination, teach or suggest such a process for identifying an active network adapter driver. Accordingly, claim 11 is allowable over the cited references. Claims 12-14 depend from and further limit claim 11 and are allowable for at least the same reasons as claim 11.

Claims 17-20

Claim 17, as amended, includes elements similar to those described above with respect to claim 11 and is allowable for at least the same reason as claim 11. Claims 18-20 depend from and further limit claim 17 and are allowable for at least the same reasons as claim 17.

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**Conclusion**

All rejections having been addressed, all pending claims should now be in condition for allowance. Should the Examiner deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the below listed telephone number.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 15, 2005.

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